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Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Botswana: comments by the State*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller.

* Circulated in the language of submission only.

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I. Introduction

1. The Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mr. Léo Heller, paid an official visit to Botswana from 9 to 17 November 2015. The purpose of the visit was to examine the progress made and remaining challenges in ensuring the full realisation of the human rights to water and sanitation in Botswana.

2. During the visit, the Special Rapporteur held meetings with different stakeholders, including representatives of the Ministries of Foreign Affairs and International Co-operation; Minerals, Energy and Water Resources; Health; Environment, Wildlife and Tourism; the Attorney General's Chambers; Water Utilities Corporation; local authorities; the Ombudsman; civil society organisations and the international community.

3. The Special Rapporteur visited communities, health facilities and schools in Old Naledi, Kasane, Maun, Sexaxa, Ghanzi, D'Kar, Tubu, Shaikarawe, and New Xade. In addition, the Special Rapporteur held discussions with community leaders, human rights defenders, women, children and health workers.

4. After the visit, the Special Rapporteur produced a Report highlighting his concluding observations and recommendations regarding the full realisation of the human right to water and sanitation in Botswana.

5. The following paragraphs present the Government's responses to the Special Rapporteur's observations and recommendations.

II. Special Rapporteur's Observations

6. The Special Rapporteur strongly encouraged Botswana to sign and ratify the International Covenant on Economic, Social and Cultural Rights, and its Optional Protocol, which provide a strong legal foundation for the human right to water and sanitation. This will also permit people to bring individual cases on the human right to water and sanitation to the attention of the Committee on Economic, Social and Cultural Rights.

7. The Special Rapporteur observed that the Water Act of 1967 insufficiently deals with water supply and sanitation issues. In response, the Government of Botswana wishes to inform that the Ministry of Minerals, Energy and Water Resources completed the development of the National Water and Wastewater Policy, which was approved by Cabinet in May 2012. However, there have been prolonged discussions on whether to regulate water under an independent authority or not. The Policy once approved by Parliament will result in legislative changes, including the review of the Water Act of 1967.

8. The Special Rapporteur noted that there is no systematic mechanism to reporting water quality to the Ministry of Health after conducting water quality tests. The Special Rapporteur was concerned that the compliance level of microbiological analysis of 8 out of 34 monitoring areas in the period of July to September 2015 was below 50 per cent. In response, the Government of Botswana wishes to state that it is actually 10 of the reported monitoring areas in the period of July to September 2015 that were below 50 per cent. However, this was mainly attributable to lack of sampling than actual compliance.

9. The Government of Botswana further informs that concerns raised by the Special Rapporteur relating to water quality tests would be comprehensively addressed through the establishment of a multi-stakeholder Water, Sanitation and Hygiene (WASH) programme. In furtherance of this, the Environmental Health Division of the Ministry of Health has kick-started a WASH survey study to take stock of what obtains on the ground in order to advise with concrete evidence for future planning. Through the WASH programme, mechanisms will be established for information sharing on water quality with

clear roles and responsibility. This communication/feedback will be put in place with official systematic and advisory roles in accordance with the existing World Health Organisation guidelines on water quality monitoring. It is also worth mentioning that the Ministry of Minerals, Energy and Water Resources has appointed an Intra-Ministerial Water Quality and Pollution Control Thematic Working Group, which has been tasked to look for ways of improving water quality countrywide. This will complement the WASH programme.

10. The Special Rapporteur called upon the Government to establish an independent regulator with competence to monitor the compliance of the water and sanitation providers with the normative content of the human right to water and sanitation. In addition, the regulator should also be given mandates to encourage genuine public participation in decision-making, with the proper information disclosure, and to ensure a mandatory affordability standard in order that water and sanitation are affordable for all. In response, the Government of Botswana wishes to inform that in May 2012, Cabinet mandated that the drafting of the Bill to establish the Botswana Energy and Water Regulatory Authority (BEWRA) be approved. The BEWRA Bill aimed to establish a regulatory authority for the energy, water and wastewater sectors as well as an efficient regulatory framework for these sectors. It also sought to protect the interests of consumers and attract investors to the energy, water and wastewater sectors. However, the BEWRA Bill has been recalled by Cabinet. Following this recall, Cabinet approved the Botswana Energy Regulatory Authority (BERA) Bill to regulate energy. The water regulatory component is still being subjected to further assessment before being considered by Cabinet.

11. The Special Rapporteur urged Botswana to approve the 2012 National Water Policy as soon as possible in order to set the framework for implementing the human right to water and sanitation based on its law and policy. Moreover, the Special Rapporteur encouraged Botswana to stipulate the prioritisation of water for personal and domestic use over other uses, as well as other principles associated to the human right to water and sanitation, not only in policy but in law. In response, it is worth noting that the 2012 National Water Policy was drafted to ensure equity, efficiency and sustainability. The Policy makes provision for the prioritisation of water for personal and domestic use. It stipulates that "access to water will be given in the following order of priority: (i) the basic requirements required for human consumption, (ii) the environment to ensure sustainable foundations for supporting the national interests, followed by (iii) arable and livestock use, commercial and industrial applications." This prioritisation will inform the drafting of the Water Act and Regulations and other attendant laws governing the water sector. The draft Water Policy will be debated by Parliament in November 2016.

12. The Special Rapporteur observed that open defecation is not only a matter of public health, but also dignity and privacy. In addition, the Special Rapporteur noted that access to water and sanitation by the urban poor is equally a concern. In response, the Government of Botswana would like to state that access to water and sanitation is a top priority in public service delivery. This is demonstrated by the large budget allocations made to the Ministry of Minerals, Energy and Water Resources. The Ministry of Minerals, Energy and Water Resources rank third in the budget allocations in National Development Plans.

13. The Special Rapporteur observed that the Government of Botswana is obliged to set standards for the availability of water and sanitation through assessing local conditions and requirements and referring to pertinent studies. He noted that the 2012 draft National Water Policy does not specify the target quantity of water per household or per capita. In this respect, the Special Rapporteur recommended that the Government needs to take into consideration that children, pregnant women and people with chronic diseases are particularly vulnerable to illnesses, such as diarrhoea, when there is insufficient water. The

Special Rapporteur also stressed the importance of establishing a system to continuously monitor and evaluate the available options of water resources to respond to water demand.

14. In response, the Government of Botswana would like to inform that following the Water Sector Reforms, a Water Resources Manager was appointed to assist with water planning, assessment, monitoring, management and protection of all water resources in the country. This new mandate calls for continuous monitoring and evaluation of the available options of water resources to respond to the rising water demand. Currently, funding is being sourced to review the Botswana National Water Master Plan. The Government further informs that there are a variety of integrated social security programmes and specific health promotion and education initiatives that address public health stresses such as insufficient water and/or nutrition targeting vulnerable groups such as children, pregnant women and people with chronic diseases.

15. The Special Rapporteur observed that Botswana does not have an affordability standard for personal and domestic use of water or sanitation. In this regard, the Special Rapporteur encouraged Botswana to set a standard and a monitoring mechanism as an essential step to ensure access to water and sanitation. Additionally, the Special Rapporteur noted that it is contrary to human rights to disconnect water when people do not have the means to pay their bills. In this context, the Special Rapporteur stated that there should be a safeguard system for those who live in poverty and those who have special needs, including health conditions. In response, it is noteworthy that the first 5,000 litres of water supply is not levied the value added tax to cater for the indigent in society.

16. The Special Rapporteur expressed concern about the flat application charge introduced for pre-paid metres for the public water standpipes and the absence of a safety net for those who cannot afford this new charge. Similarly, the Special Rapporteur expressed the same concern regarding sanitation. He noted that many people cannot afford the sludge collection services; hence many pit latrines were overflowing. In view of these, the Special Rapporteur urged the Botswana Government to revisit the tariff systems and the new charges on public water points in order to put in place clear mechanisms to ensure affordable water and sanitation for all, including those who cannot pay the bills for the reasons beyond their control such as unemployment. At the same time, the tariff systems should be set to balance the sustainability and the affordability of water and sanitation services. Similar affordability standards for sanitation must be established. In setting such standards, the Government must consider both on-site and networked sanitation and consider the full costs of sanitation, including the collection, transport and disposal or reuse of wastewater. In response, the Government of Botswana would like to inform that currently tariffs for domestic water supply are revised by the Water Utilities Corporation and approved by the Ministry of Minerals, Energy and Water Resources.

17. The Special Rapporteur also noted that the human right to water and sanitation require the progressive realisation of these rights, using the maximum available resources. According to the Special Rapporteur, Botswana needs to allocate budgets specifically on water, sanitation and hygiene, including menstrual hygiene management. Using the 2015 Water, Sanitation and Hygiene (WaSH) Performance Index, the Special Rapporteur concluded that Botswana was not investing its maximum available resources to progressively realise the human right to water and sanitation without discrimination. In response, the Government of Botswana wishes to state that water and sanitation are at the top of the country's development agenda as evidenced by the budget allocations made to these sectors. The Ministry of Health, in collaboration with the United States Agency for International Development (USAID) through the Southern Africa Regional Environmental Programme (SAREP), initiated a WASH campaign in the North West of the country with the aim to replicate it to other regions.

18. The Special Rapporteur also observed that no great progress was made regarding the implementation of the 2009 recommendations of the Special Rapporteur on the Situation of the Rights and Fundamental Freedoms of Indigenous people that urged the Government to incorporate a "respect for and recognition of traditional systems" into the land-board system. In response, the Government of Botswana would like to inform that the Land Board system already incorporates a respect for, and recognition of traditional systems. It is worth noting that when Land Boards were established under the Tribal Land Act of 1968, the intention was to improve land governance and land rights among the citizens of Botswana. The system also incorporated the respect for and recognition of the traditional system of land management, for example, the respect for allocations of land that were performed by the Chiefs (Dikgosi).

19. The system also provides for appointment of Dikgosi into the membership of Land Boards, as ex officio members, to advise Land Boards on cultural and traditional systems in relation to land management. The system also recognises the role of the Land Overseers in the administration and allocation of land. The Land Overseers sign applications to attest the availability and suitability of land for allocation. The reservation of land for commonage (communal land) either for grazing or arable farming as was traditionally practiced is respected.

20. The Special Rapporteur noted that there were striking inequalities in access to water and sanitation in rural and remote areas, resettlements and poor urban settlements. Furthermore, the Special Rapporteur stated that people living in transition from nomadic life and women and girls suffer the lack of access to water and sanitation disproportionately. In response, the Government of Botswana wishes to inform that the water sector reforms are based on the Integrated Water Resources Management (IWRM) principle which stresses economic efficiency in water use, equity, and environmental and ecological sustainability. The IWRM principles are modelled on the four Dublin principles:

1) fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment;

2) water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels;

3) women play a central part in the provision, management and safeguarding of water; and

4) water has an economic value in all its competing uses and should be recognised as economic good.

III. Recommendations

a) Adopt the Botswana National Water Policy to comprehensively approach water and sanitation issues guided by the principles and normative content of the human rights to water and sanitation. Such policy should include a long-term strategy to manage water resources in a sustainable manner, taking into account a predicted increase in water stress.

21. The Government of Botswana accepts this recommendation. Botswana has developed a National Integrated Water Resources Management/Water Efficiency (IWRM/WE) Plan in 2013 to address the water stress gap. Furthermore, the Botswana National Water Master Plan of 2006 is being reviewed to improve the management and sustainable use of water resources.

b) Adopt immediate measures to improve the treatment of water, including carrying out water disinfection of all the water supply systems and revisiting the measures of water rationing.

22. The Government of Botswana accepts this recommendation. The Water Utilities Corporation always ensures that water supplied to the public is in compliance with the regulatory standards on drinking water. Non-compliance resulting from chemical parameters is addressed through treatment methods such as conventional water treatment, reverse osmosis, and ion exchange. Microbial contamination is addressed by disinfection. The Water Utilities Corporation has adopted the following measures to address microbial contamination:

- Assessment of existing disinfection infrastructure to ensure that they are working optimally. To this end, a pilot project was undertaken at Lotsane Dam where there is a Chlorine dioxide disinfection facility that was installed, but consistently failed to produce the desired results. After service, maintenance and optimisation of the system, it is now possible to achieve 100% compliance in all the 22 villages supplied from the dam.
- All disinfection systems are currently being audited and serviced to ensure they operate optimally.
- Implement continuous maintenance (both preventative and corrective) to ensure that these systems are always in good working order.
- Where there are no disinfection systems, the use of disinfecting floaters are employed manually.
- All Water Utilities Corporation projects include a disinfection component.
- Water Utilities Corporation continues to monitor water quality at all its operational areas with a view to continuously improve quality.
- The Corporation will embark on a holistic approach to evaluate through a research and development project other disinfection techniques such as chloramines, UV ozonation, hypochlorite and ammonia, which will include a cost benefit analysis and health and safety implications of all. The aim of this project would be to ensure that the most appropriate technique is employed for every distribution network.

c) Set up a systematic monitoring system of water quality between the Water Utilities Corporation and the Ministry of Health and increase the frequency of the water quality monitoring programme carried out by the Department of Water Affairs, regardless of the creation of an independent regulatory body.

23. The Government of Botswana accepts this recommendation. Plans are already underway to increase the frequency of the water quality monitoring system through the establishment of a multi-stakeholder Water, Sanitation and Hygiene (WASH) programme, which include critical stakeholders such as Water Utilities Corporation, Botswana Bureau of Standards, and Ministries of Health; Minerals, Energy and Water Resources; and Local Government and Rural Development. Some of the principal aims of the WASH programme are to review and further improve monitoring and compliance of drinking water quality with the National Drinking Water Quality Standards. This multi-stakeholder committee meets twice a year.

d) Adopt special measures to protect the poor and people living in vulnerable situations from being hit by water rationing measures both at normal times and at emergency situations.

24. The Government of Botswana accepts this recommendation. However, Botswana is faced with challenges of water scarcity, delayed infrastructure development, and limited funding. In this regard, the country is sourcing funding for infrastructure development from its development partners.

e) Review the tariff system, particularly the scheme of same tariff applied for the households and for business, in order to balance sustainability and affordability of water and sanitation services particularly for the poor.

25. The Government of Botswana accepts this recommendation. In accordance with this recommendation, a water tariff study was conducted in 2014 and is currently used to determine and manage the water tariffs. The tariff structure is set such that the low consumers pay highly subsidised rates and these rates are kept low to ensure affordability, and are reviewed after a long period of time. In cases where the reviews are undertaken, there are minimal changes made at the lower brackets. The first 5, 000 litres are also not charged value added tax to take into consideration the needs of the indigent in society.

f) Establish a safeguard system to protect access to essential water and sanitation for those who live in poverty and those who have special needs, including health conditions through financial assistance, special low tariff, subsidies or other measures.

26. The Government of Botswana accepts this recommendation. Currently, the first 5, 000 litres of water are not levied value added tax as part of the safeguard system adopted to facilitate access to water by the indigent in society.

g) Sign and ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, and guarantee the human right to water and sanitation and the prioritisation of water for personal and domestic uses in the national legislation.

27. In response, Botswana is not oblivious to the importance to the treaties it has not yet ratified. It progressively works on the realisation of issues of concern therein, especially where they are considered paramount by the global village. While Botswana is not a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) various provisions of the Constitution and other pieces of legislation implicitly recognise them. The ratification by Botswana of recommended treaties will always be undertaken when the country is in a position to implement the provisions of the different Conventions.

h) Establish an independent regulator with mandates and financial and human resources to monitor the implementation of the human right to water and sanitation, including the quality of water and affordability of services.

28. The Government of Botswana does not accept this recommendation. The Botswana Cabinet approved the establishment of the Botswana Energy Regulatory Authority, but excluded water which is considered a strategic commodity which cannot be left in the hands of the private sector.

i) Revisit the National Settlement Policy in view of equal access to water and sanitation for all regardless of where they live.

29. The Government of Botswana accepts this recommendation. The Ministry of Lands and Housing through the Department of Town and Regional Planning is developing a National Spatial Plan 2036 (NSP'2036), which will provide an overall policy framework for spatial planning and development in Botswana up to the year 2036. The National Spatial Plan is also an interpretation of Government development strategies and policies, including water and sanitation issues into spatial dimension to guide socio-economic development of the country. The content of the National Settlement Policy will be embedded in the National Spatial Plan, hence there is no need to revise the old National Settlement Policy.

j) Continue and strengthen dialogue with communities who are living nomadic lives or who are in transition from nomadic life to find sustainable solutions for their access to water and sanitation.

30. The Government of Botswana accepts this recommendation. The Ministry of Local Government and Rural Development is continually involved in dialogue with the aforesaid communities.

k) Increase the budget to the maximum available level to progressively realise the human right to water and sanitation and target the increased budget to underdeveloped areas such as rural areas and new settlements to ensure equality.

31. The Government of Botswana accepts this recommendation. The Ministry of Minerals, Energy and Water Resources continually engages development partners to maximise its ability to realise the human right to water and sanitation. Furthermore, the Ministry requests for additional funding from the Government to cater for development of water resources in all settlements, including the underdeveloped areas.

l) Establish clear budget lines to provide assistance to the water and sanitation systems that are not connected to the central network, particularly in urban periphery, rural and remote areas.

32. The Government of Botswana accepts this recommendation. Infrastructure is being developed to allow connection to the central sewerage system. In areas where these services are unavailable, Water Utilities Corporation empties pit latrines and septic tanks at a subsidised rate. All budget cycles for development projects include considerations to improve the sanitation systems in most parts of the country.

m) Explore a cross-subsidy and a fiscal subsidy system for emptying pit latrine services to ensure fairer charges.

33. The Government of Botswana accepts this recommendation. Infrastructure is being developed to allow connection to the central sewerage system. In areas where these services are unavailable, Water Utilities Corporation empties pit latrines and septic tanks at a subsidised rate.

n) Invest in maintenance and operation of new and existing services, including human resources, in order to avoid deterioration in the services currently provided, and provide financial and technical support to the districts.

34. The Government of Botswana accepts this recommendation. The Ministry of Minerals, Energy and Water Resources has requested for additional funding and is undertaking projects to rehabilitate dilapidated and deteriorated infrastructure. The Ministry also invests in maintenance and operation of new and existing services. In addition, the Ministry uses capacity building as one of the key strategies of improving efficiency and effectiveness in service provision. The Ministry develops annual Training Plans to train and develop Officers in certain skills to be able to deliver quality services.

o) Increase the participation of women in decision-making on water and sanitation related matters and take special measures to reduce disproportionate burden on women's shoulders caused by the lack of access to water and sanitation.

35. The Government of Botswana accepts this recommendation. Recently, a woman was appointed as the Director of the Department of Water Affairs to increase participation of women in decision-making on water and sanitation related matters in conformity with the IWRM principles.

p) Improve access to water, sanitation and hygiene in schools, in particular install menstrual hygiene management systems in all schools, as well as in health centres.

36. The Government of Botswana accepts the recommendation to install menstrual hygiene management systems in all schools as well as in health centres. Plans are underway to incorporate menstrual hygiene systems in all new buildings. All of the public schools and health centres are connected to the water supplies scheme. Most of the schools in the country have put in place ad hoc systems to deal with this issue, including the provision of protective wear, RED refuse bags and incinerators for the proper disposal and management of waste. The Water, Sanitation and Hygiene (WASH) programme and the National School Health Policy that is being developed, also cover menstrual hygiene management systems.

q) Strengthen access to information including by setting a standard rule on the communication of the water and sanitation related measures the Government is taking to enable people to make informed decisions regarding the human rights to water and sanitation.

37. The Government of Botswana accepts this recommendation. The Ministry of Minerals, Energy and Water Resources continuously embarks on public education and awareness campaigns to educate and inform the public about issues pertaining to water and sanitation through stakeholder workshops, road shows and commemorative events such as World Water Day, Wetlands, and Environment.

r) Strengthen the rights to access to justice and accountability, including by accelerating the efforts of the Office of the President to amend the Ombudsman Act to include the role of a human rights institution.

38. The Government of Botswana accepts this recommendation. The Government has started the process of drafting a Bill which will establish the Office of the Ombudsman as a hybrid institution that will investigate maladministration as well as promoting and protecting human rights of the citizens of Botswana. Furthermore, the Office of the Ombudsman is undergoing organisational and structural review to provide for the execution of the human rights mandate.